

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIFFANY ANN GOODMAN,

Defendant-Appellant.

UNPUBLISHED

April 19, 2002

No. 228316

Saginaw Circuit Court

LC No. 97-014795-FH

Before: Cavanagh, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant appeals by right her jury trial conviction of two counts of assault with intent to do great bodily harm, MCL 750.84, and one count of malicious destruction of property over \$100, MCL 750.377a,¹ and her concurrent sentences—as a second habitual offender, MCL 769.10—of eighty months to fifteen years’ imprisonment for assault with intent to do great bodily harm, MCL 750.84, and twenty-four to seventy-two months’ imprisonment for malicious destruction of property over \$100, MCL 750.377a. We affirm.

Defendant first argues that the trial court erred by not allowing her to impeach a witness through the use of prior inconsistent statements. We review this decision for an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

MRE 613 allows witnesses to be impeached through the use of prior statements. The admission or rejection of evidence does not merit reversal unless “the error complained of has resulted in a miscarriage of justice.” MCL 769.26. Furthermore, because this is an allegation of non-constitutional error, it is subject to harmless error analysis. *People v Toma*, 462 Mich 281, 296; 613 NW2d 694 (2000). Thus, to merit reversal, defendant must demonstrate that outcome determinative error occurred. *Id.* We find no error in the trial court’s rulings; had error occurred, it was neither outcome determinative nor a miscarriage of justice.

¹ MCL 750.377a was amended in 1998. Defendant was charged and convicted under the pre-amended version.

Defendant next contends that she received ineffective assistance of counsel because her trial counsel failed to object to the qualifications of an expert witness or to present an expert witness as rebuttal. Because defendant did not move for a *Ginther*² hearing, the scope of the review is limited to the record. *People v Darden*, 230 Mich App 597, 604; 585 NW2d 27 (1998). We review this issue de novo. *People v Pickens*, 446 Mich 298, 359; 521 NW2d 797 (1994). Defendant must establish both (1) that her counsel's performance was below an objective standard of professional reasonableness, and (2) a reasonable probability that without counsel's error the result would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994), cert den sub nom *Michigan v Caruso*, 513 US 1121; 115 S Ct 923; L Ed 2d 502 (1995).

We presume that decisions regarding whether to object to the qualifications of an expert witness, *People v Cicotte*, 133 Mich App 630, 637; 349 NW2d 167 (1984), or whether to call an expert witness, *People v Viaene*, 119 Mich App 690, 696; 326 NW2d 607 (1982), are trial strategy. Because defendant's allegations fall under these areas, we find no ineffective assistance. Moreover, the witness testified within his area of expertise.

Defendant next argues that her sentence was disproportionate. Defendant was sentenced as a habitual offender under MCL 769.10. A sentence imposed under the judicial guidelines must be proportionate to the circumstances and factual context of the offense and offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A sentence within the range of the statutory sentencing limits is presumptively valid. *People v Kennebrew*, 220 Mich App 601, 611; 560 NW2d 354 (1996). Although the sentencing guidelines do not apply to habitual offenders, *People v Cervantes*, 448 Mich 620, 625-626; 532 NW2d 831 (1995), sentences must still be proportionate, *People v Crawford*, 232 Mich App 608, 621; 591 NW2d 669 (1998), and a sentence within the statutory limits remains presumptively proportionate. *People v Rice (On Remand)*, 235 Mich App 429, 447; 597 NW2d 843 (1999). We find that because defendant's sentences were within the statutory limits, they were proportionate and therefore valid. The special considerations proffered by defendant do not require resentencing.

Defendant also argues that the trial court violated the 180-day rule of MCL 780.131. The purpose of MCL 780.131 is to prevent the accumulation of sentences by allowing prison inmates' sentences to run concurrently. *People v Falk*, 244 Mich App 718, 721; 625 NW2d 476 (2001). It applies to prisoners in state correctional facilities. *People v Smith*, 438 Mich 715, 718; 475 NW2d 333 (1991); *People v Stoudemire*, 63 Mich App 643, 647-649; 234 NW2d 743 (1975). Because defendant was not a prisoner in a state correctional facility before her conviction, the 180-day rule is inapplicable here.

Defendant finally argues that she was denied a fair trial due to prosecutorial misconduct; however, she failed to preserve this issue. Review of this issue is precluded unless defendant shows that the prejudicial impact of the alleged misconduct was so great that it could not have been corrected by a curative instruction from the trial court, and that failure to consider the issue would result in a miscarriage of justice. *People v Norman*, 184 Mich App 255, 258; 457 NW2d

² *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

136 (1990). We decline to review this issue because the alleged errors—if error at all—could have been corrected by curative instructions from the trial court and no miscarriage of justice will result from our decision.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Peter D. O’Connell